



April 4, 2003

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## ENGROSSED HOUSE BILL No. 1367

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DIGEST OF HB 1367 (Updated April 1, 2003 3:03 PM - DI 106)

**Citations Affected:** IC 35-42; IC 35-45; noncode.

**Synopsis:** Repeat indecent offenders. Provides that a person commits performing sexual fondling in the presence of a minor, a Class D felony, if the person: (1) engages in sexual intercourse; (2) engages in deviate sexual conduct; or (3) touches or fondles the person's own body; in the presence of a child less than 14 years of age. Provides that a person commits public indecency, a Class A misdemeanor: (1) if the person appears nude in a public place with the intent to arouse the person's own sexual desires or the sexual desires of another person; or (2) if the person is at least 18 years of age and appears nude in a public place with the intent to be seen by a child less than 16 years of age. Makes public indecency a Class D felony if the person has a prior unrelated conviction for public indecency. Provides that a person who appears nude in a nonpublic place with the intent to be seen by persons other than invitees or occupants of that place commits indecent exposure, a Class C misdemeanor. Provides that a person who appears nude in a public place commits public nudity, a Class C misdemeanor. Makes public nudity a Class B misdemeanor if the person intends to be seen by another person, and makes a second offense a Class D felony. Makes public nudity a Class A misdemeanor if the person appears nude in a department of natural resources owned or managed property with the intent to arouse the sexual desires of the person or another person, or on school grounds or in a public park; and makes a second offense a Class D felony.

**Effective:** July 1, 2003.

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### Stilwell, Foley

(SENATE SPONSORS — BRAY, LONG, YOUNG R)

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January 14, 2003, read first time and referred to Committee on Courts and Criminal Code.  
February 25, 2003, amended, reported — Do Pass.  
March 3, 2003, read second time, ordered engrossed. Engrossed.  
March 4, 2003, read third time, passed. Yeas 97, nays 0.

SENATE ACTION

March 13, 2003, read first time and referred to Committee on Criminal, Civil and Public Policy.  
April 3, 2003, amended, reported favorably — Do Pass.

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April 4, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1367

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A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 35-42-4-5, AS AMENDED BY P.L.118-2002,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2003]: Sec. 5. (a) A person eighteen (18) years of age or older  
4 who knowingly or intentionally directs, aids, induces, or causes a child  
5 under the age of sixteen (16) to touch or fondle himself or another child  
6 under the age of sixteen (16) with intent to arouse or satisfy the sexual  
7 desires of a child or the older person commits vicarious sexual  
8 gratification, a Class D felony. However, the offense is:  
9 (1) a Class C felony if a child involved in the offense is under the  
10 age of fourteen (14);  
11 (2) a Class B felony if:  
12 (A) the offense is committed by using or threatening the use of  
13 deadly force or while armed with a deadly weapon; or  
14 (B) the commission of the offense is facilitated by furnishing  
15 the victim, without the victim's knowledge, with a drug (as  
16 defined in IC 16-42-19-2(1)) or a controlled substance (as  
17 defined in IC 35-48-1-9) or knowing that the victim was

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- 1 furnished with the drug or controlled substance without the  
 2 victim's knowledge; and  
 3 (3) a Class A felony if it results in serious bodily injury.  
 4 (b) A person eighteen (18) years of age or older who knowingly or  
 5 intentionally directs, aids, induces, or causes a child under the age of  
 6 sixteen (16) to:  
 7 (1) engage in sexual intercourse with another child under sixteen  
 8 (16) years of age;  
 9 (2) engage in sexual conduct with an animal other than a human  
 10 being; or  
 11 (3) engage in deviate sexual conduct with another person;  
 12 with intent to arouse or satisfy the sexual desires of a child or the older  
 13 person commits vicarious sexual gratification, a Class C felony.  
 14 However, the offense is a Class B felony if any child involved in the  
 15 offense is less than fourteen (14) years of age, and it is a Class A felony  
 16 if the offense is committed by using or threatening the use of deadly  
 17 force, if it is committed while armed with a deadly weapon, if it results  
 18 in serious bodily injury, or if the commission of the offense is  
 19 facilitated by furnishing the victim, without the victim's knowledge,  
 20 with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance  
 21 (as defined in IC 35-48-1-9) or knowing that the victim was furnished  
 22 with the drug or controlled substance without the victim's knowledge.  
 23 (c) A person eighteen (18) years of age or older who knowingly or  
 24 intentionally:  
 25 (1) **engages in sexual intercourse;**  
 26 (2) **engages in deviate sexual conduct; or**  
 27 (3) **touches or fondles himself, the person's own body;**  
 28 in the presence of a child less than fourteen (14) years of age with the  
 29 intent to arouse or satisfy the sexual desires of the child or the older  
 30 person commits ~~fondling~~ **performing sexual conduct** in the presence  
 31 of a minor, a Class D felony.  
 32 SECTION 2. IC 35-45-4-1, AS AMENDED BY P.L.121-2000,  
 33 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 34 JULY 1, 2003]: Sec. 1. (a) A person who knowingly or intentionally,  
 35 in a public place:  
 36 (1) engages in sexual intercourse;  
 37 (2) engages in deviate sexual conduct;  
 38 (3) appears in a state of nudity **with the intent to arouse the**  
 39 **sexual desires of the person or another person;** or  
 40 (4) fondles the person's genitals or the genitals of another person;  
 41 commits public indecency, a Class A misdemeanor.  
 42 (b) **A person at least eighteen (18) years of age who knowingly**



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or intentionally, in a public place, appears in a state of nudity with the intent to be seen by a child less than sixteen (16) years of age commits public indecency, a Class A misdemeanor.

(c) However, the offense under subsection (a) or subsection (b) is a Class D felony if the person who commits the offense has a prior unrelated conviction:

- (1) by appearing in the state of nudity with the intent to arouse the sexual desires of the person or another person in or on a public place where a child less than sixteen (16) years of age is present;
- (2) in a public park and has a prior unrelated conviction that was entered after June 30, 2000, for an offense under this section;
- (3) in or on school property and has a prior unrelated conviction that was entered after June 30, 2000, for an offense under this section; or
- (4) in department of natural resources owned or managed property and has a prior unrelated conviction that was entered after June 30, 2000, for an offense under this section.

(1) under subsection (a) or (b); or

(2) in another jurisdiction, including a military court, that is substantially equivalent to an offense described in subsection (a) or (b).

(d) As used in this section, "nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of covered male genitals in a discernibly turgid state.

(e) A person who, in a place other than a public place, with the intent to be seen by persons other than invitees and occupants of that place:

- (1) engages in sexual intercourse;
  - (2) engages in deviate sexual conduct; or
  - (3) fondles the person's genitals or the genitals of another person;
- or
- (4) appears in a state of nudity;

where the person can be seen by persons other than invitees and occupants of that place commits indecent exposure, a Class C misdemeanor.

SECTION 3. IC 35-45-4-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1.5. (a) As used in this section, "nudity" has the meaning set forth in section 1(d) of this chapter.

(b) A person who knowingly or intentionally appears in a public



1 place in a state of nudity commits public nudity, a Class C  
2 misdemeanor.

3 (c) A person who knowingly or intentionally appears in a public  
4 place in a state of nudity with the intent to be seen by another  
5 person commits a Class B misdemeanor. However, the offense is a  
6 Class D felony if the person has a prior unrelated conviction under  
7 this subsection or under subsection (d).

8 (d) A person who knowingly or intentionally appears in a state  
9 of nudity:

10 (1) in or on school grounds;

11 (2) in a public park; or

12 (3) with the intent to arouse the sexual desires of the person or  
13 another person, in a department of natural resources owned  
14 or managed property;

15 commits a Class A misdemeanor. However, the offense is a Class  
16 D felony if the person has a prior unrelated conviction under this  
17 subsection or under subsection (c).

18 SECTION 4. [EFFECTIVE JULY 1, 2003] IC 35-45-4-1 and  
19 IC 35-42-4-5, both as amended by this act, and IC 35-45-4-1.5, as  
20 added by this act, apply only to acts committed after June 30, 2003.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1367, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 3. IC 35-42-4-5, AS AMENDED BY P.L.118-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) A person eighteen (18) years of age or older who knowingly or intentionally directs, aids, induces, or causes a child under the age of sixteen (16) to touch or fondle himself or another child under the age of sixteen (16) with intent to arouse or satisfy the sexual desires of a child or the older person commits vicarious sexual gratification, a Class D felony. However, the offense is:

(1) a Class C felony if a child involved in the offense is under the age of fourteen (14);

(2) a Class B felony if:

(A) the offense is committed by using or threatening the use of deadly force or while armed with a deadly weapon; or

(B) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge; and

(3) a Class A felony if it results in serious bodily injury.

(b) A person eighteen (18) years of age or older who knowingly or intentionally directs, aids, induces, or causes a child under the age of sixteen (16) to:

(1) engage in sexual intercourse with another child under sixteen (16) years of age;

(2) engage in sexual conduct with an animal other than a human being; or

(3) engage in deviate sexual conduct with another person;

with intent to arouse or satisfy the sexual desires of a child or the older person commits vicarious sexual gratification, a Class C felony. However, the offense is a Class B felony if any child involved in the offense is less than fourteen (14) years of age, and it is a Class A felony if the offense is committed by using or threatening the use of deadly force, if it is committed while armed with a deadly weapon, if it results in serious bodily injury, or if the commission of the offense is

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facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(c) A person eighteen (18) years of age or older who knowingly or intentionally:

- (1) engages in sexual intercourse;
- (2) engages in deviate sexual conduct; or
- (3) touches or fondles ~~himself~~; **the person's own body**;

in the presence of a child less than fourteen (14) years of age with the intent to arouse or satisfy the sexual desires of the child or the older person commits ~~fondling~~ **performing sexual conduct** in the presence of a minor, a Class D felony."

Page 1, line 16, after "offense" insert **"has a prior unrelated conviction:"**.

Page 2, line 10, delete "has a prior unrelated".

Page 2, line 11, delete "conviction", begin a new line block indented, and insert:

**"(1)".**

Page 2, line 11, after "(a)" delete "." and insert **"or (b); or**

**(2) in another jurisdiction, including a military court, that is substantially equivalent to an offense described in subsection (a)."**

Page 2, line 34, delete "However, the" and insert **"The"**.

Page 2, line 36, after "." insert **"The offense is a Class A misdemeanor if the person appears in or on school grounds, in a public park, or in a department of natural resources owned or managed property with the intent to arouse the sexual desires of the person or another person."**

Page 2, line 37, delete "IC 35-45-4-1, as" and insert **"IC 35-45-4-1 and IC 35-42-4-5, both as"**.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1367 as introduced.)

WEINZAPFEL, Chair

Committee Vote: yeas 11, nays 0.



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## COMMITTEE REPORT

Mr. President: The Senate Committee on Criminal, Civil and Public Policy, to which was referred House Bill No. 1367, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 21, delete "(a)." and insert **"(a) or (b)."**

Page 4, line 2, delete "The offense is a Class B misdemeanor if the" and insert:

**"(c) A".**

Page 4, line 2, after "person" insert **"who knowingly or intentionally"**.

Page 4, line 4, delete "person." and insert **"person commits a Class B misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated conviction under this subsection or under subsection (d)."**

Page 4, line 4, delete "The offense is a Class A misdemeanor if" and insert:

**"(d) A person who knowingly or intentionally"**.

Page 4, line 5, delete "the person".

Page 4, line 5, after "appears" insert **"in a state of nudity:**

**(1)".**

Page 4, line 5, after "grounds" delete "," and insert ";

**(2)".**

Page 4, line 5, after "park" delete ", or" and insert **"; or**

**(3) with the intent to arouse the sexual desires of the person or another person,".**

Page 4, line 6, delete "property" and insert **"property; commits a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated conviction under this subsection or under subsection (c)."**

Page 4, delete lines 7 through 8.

and when so amended that said bill do pass.

(Reference is to HB 1367 as printed February 26, 2003.)

LONG, Chairperson

Committee Vote: Yeas 9, Nays 0.

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